



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 8, 2020

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Jeffrey A. Merkley
United States Senate
Washington, D.C. 20510

Dear Senator Merkley:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your letters dated April 1, 2020, and April 2, 2020, to Administrator Andrew Wheeler, regarding Agency operations and regulatory actions as we respond to COVID-19.

First and foremost, under Administrator Wheeler's leadership, we at the Agency are primarily concerned with the health and welfare of our EPA employees and their families. We are an Agency built on people, people whose professional mission is to protect human health and the environment. Without our people we cannot fulfill our mission. We are taking extensive steps to support our workforce as the health crisis continues. At Headquarters and in our regional offices, our EPA colleagues are doing great work for the American people. In response to your letter, I would like to highlight some of the work the Agency has been doing to meet the challenges posed by this crisis.

Agency Operations

EPA has remained operational throughout this crisis, and we have continued our work to protect human health and the environment. We strive to deliver the same quality of work in a timely manner for the American public.

After beginning to see sustained community spread of COVID-19, on March 15, 2020, the Office of Management and Budget (OMB) directed all federal Executive Branch departments and agencies within the National Capital Region, consistent with OMB's recent guidance (OMB M-20-13), to offer maximum telework flexibilities to all current telework eligible employees, consistent with operational needs of the departments and agencies as determined by their heads. In addition, OMB encouraged agencies to use all existing authorities to offer telework to additional employees, to the extent their work could be telework enabled. Consistent with the OMB guidance, in an effort to help reduce the spread of the virus, and out of an abundance of caution, Administrator Wheeler authorized voluntary unscheduled leave and telework for all EPA employees across the nation that same day.

Effective Monday, March 16, 2020, all employees with a telework agreement were permitted, to the extent possible, to begin teleworking at least through Friday, April 3. As noted above, the Agency has already extended the maximum possible use of telework and continues to assess the situation and inform our employees and the public of any changes. Employees who were not previously telework ready were encouraged to come into the office on Monday, March 16, 2020, to gather necessary equipment and

materials. Employees who did not have a telework agreement in place were encouraged to work with their supervisor to complete such an agreement. Supervisors and employees were encouraged to work together to maximize telework to the extent possible.

The Agency received further guidance from OMB on March 17, 2020, which—consistent with the Administrator’s March 15 message to employees—directed all federal agencies to “minimize face-to-face interactions” in a manner consistent with the Centers for Disease Control (CDC) guidelines. This guidance was forwarded to all employees. It also directed agencies to prioritize its mission-critical functions.

EPA’s Office of Mission Support (OMS) provides around the clock support to help our employees feel connected and productive during this time of social distancing. Full time teleworking has been a transition for many staff and OMS has worked to help them acclimate to our current environment. Our Human Resources team continually works with the Office of Personnel Management (OPM) on workforce flexibilities and hiring, which has enabled the Agency to continue on-boarding new employees using virtual tools. Additionally, EPA’s Office of the Chief Financial Officer (OCFO) is ensuring that some things do not change during this time, including overseeing and managing EPA’s financial responsibilities. OCFO’s top priorities are to ensure that the Agency is paying our employees and our bills on time. OCFO has also completed its work loading the Agency’s Operating Plan funding for FY 2020 so that resources are available for supporting all offices in their ongoing work.

The Agency has closely followed the guidance of state and local public health officials when making decisions about telework and, when appropriate, activating our Continuity of Operations Plans (COOP). By tying our decision-making regarding telework to the guidance of state and local public health officials, we ensured the use of uniform criteria in offices across the country and allowed for the Agency to quickly inform employees of the steps being taken in response to the virus. This allowed us to quickly activate the COOP in our regional offices.

Administrator Wheeler has also made clear that unless there is a compelling reason to be in the office, all EPA employees should telework. We are also evaluating options to provide as much flexibility to our employees as possible so that they can balance work and family responsibilities. For example, EPA increased the work hours available and allowed for extended breaks during the day for those on flexible work schedules. We have also expanded the availability of such schedules. Specifically, employees on flexible work schedules are now allowed to work on Saturdays to meet their 80-hour work requirement if they choose to do so. With this additional flexibility, along with the waiver of core hours for flexible schedules, employees on flexible work schedules can spread their 80 hours over 12 workdays (Monday through Saturday), between 5:00 a.m. and 11:30 p.m. Our goal is to provide as much flexibility as possible so that employees can appropriately balance work and family responsibilities during this time.

Enforcement and Compliance Assurance

As you note in your letter, there have been reports in the media that mischaracterize the Agency’s March 26, 2020, memorandum on “COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program” (Temporary Policy). You also note that “sources” have claimed that “EPA appears ready to issue sweeping waivers of enforcement known as ‘no action assurances.’” I appreciate that you are turning to the Agency for answers rather than relying on the media or “sources.”

On April 2, 2020, EPA’s Assistant Administrator for the Office of Enforcement and Compliance

Assurance (OECA) sent a letter to Members of Congress to clarify misconceptions and misreporting regarding the Temporary Policy. This letter was sent to all Members of the United States Senate, including you.

Since Assistant Administrator Bodine's letter, the national health crisis has only become more acute. The number of deaths in the United States from COVID-19 has now passed 70,000 and over 1,200,000 persons have tested positive for the virus. These statistics underscore the need to find a path that allows facilities that provide essential services (and thus are exempt from state or local stay at home orders) to stay operational while also protecting their workers and the public.

EPA's Temporary Policy appropriately balances these considerations and provides a transparent statement of how and when EPA will consider exercising enforcement discretion. EPA is mindful of the health and safety of the public, as well as workers, EPA staff, and co-regulators. EPA is taking these important considerations into account as we all continue our work to protect human health and the environment. EPA is also aware that the consequences of the COVID-19 public health emergency may affect facility operations and the availability of key staff and contractors and others involved in the important work of complying with the nation's environmental protection laws. Contrary to the erroneous characterizations, the Temporary Policy clearly states that regulated parties are expected to "make every effort to comply with their environmental compliance obligations." Furthermore, the Temporary Policy outlines steps regulated entities should take to minimize the effects and duration of any noncompliance caused by COVID-19, particularly where the noncompliance may result in acute risks or serious threats to human health and the environment. With respect to routine monitoring and reporting, the Temporary Policy states that if, for example, a sample is not collected or a deadline is missed and the facility documents that the cause is COVID-19, then EPA will not seek penalties.

The Temporary Policy does not excuse exceedances of pollutant limitations in permits, regulations, and statutes due to the COVID-19 public health emergency. EPA expects regulated entities to comply with all obligations and if they do not, the Temporary Policy says that the Agency will consider the public health emergency, on a case-by-case basis, when determining an appropriate response. Further, in cases that may involve acute risks or imminent threats, or failure of pollution control or other equipment that may result in exceedances, EPA's willingness to provide even that consideration is conditioned on the facility contacting the appropriate EPA regional office or authorized state or tribe to allow regulators to work with that facility to mitigate or eliminate such risks or threats.

The Temporary Policy also states that for critical infrastructure, EPA will consider issuing a tailored, short-term No Action Assurance (NAA), with conditions to protect the public, if necessary and if EPA determines it is in the public interest. A public interest finding is based on impacts to the general public, not a specific facility. For example, on March 18, 2020, EPA issued a temporary NAA that is applicable to ten pharmaceutical and medical supply facilities in Puerto Rico. The NAA allows those facilities to continue to rely on emergency generators to stay operational, as the electric grid in Puerto Rico has not yet recovered from the recent earthquakes. This action is in the public interest because it is important for facilities engaged in the production of pharmaceuticals and/or medical supplies that are in demand due to COVID-19 virus concerns to keep operating. On March 27, 2020, EPA issued a temporary waiver of the summertime volatility requirements for gasoline. The COVID-19 public health emergency has caused a dramatic decrease in the demand for gasoline. That decrease in demand, in turn, has prevented regulated parties from selling the winter gasoline in their storage tanks and turning their storage tanks over to compliant summer gasoline by May 1, 2020. This action is in the public interest because it was necessary to ensure a steady supply of gasoline. EPA is ensuring transparency by posting these types of

actions, and any will post any others related to the COVID-19 public health emergency (<https://www.epa.gov/enforcement/covid-19-enforcement-and-compliance-resources#naa>).

EPA's COVID-19 website (<https://www.epa.gov/coronavirus>) also contains links to enforcement and compliance resources (<https://www.epa.gov/enforcement/covid-19-enforcement-and-compliance-resources>) which provide the public, the regulated community and other government agencies with the most complete and up to date information on EPA enforcement and compliance actions related to COVID-19.

Regulatory Developments

EPA is continuing our regulatory work while doing everything we can to help address environmental and public health issues surrounding COVID-19. We understand that COVID-19 has caused disruption in the lives of many Americans—including our employees—but it is our duty to the American people to ensure we are continuing our work towards protecting human health and the environment. The Agency has received a number of requests in recent days for extensions to public comment periods and will consider those requests on a case-by-case basis. Regulations.gov is fully functional and we encourage the public to submit comment during the established periods. The Office of the Federal Register continues to publish regulatory documents, and the Agency's Office of Policy has worked with our national programs to enable electronic processes. EPA will provide updated information on the expected timing of all the Agency rules in the forthcoming Spring regulatory agenda.

The Administrator decided it was appropriate to extend the comment period on the Agency's Strengthening Transparency in Regulatory Science rulemaking. In response to concerns raised by public health organizations and state officials—who, like EPA, are focused on delivering our most critical public health missions at this time—Administrator Wheeler decided to extend the public comment period for an additional 30-day period, through May 18, 2020.

The supplemental notice is not a new rulemaking; rather, it provides clarifications on certain terms and aspects of the 2018 proposed rule. The 2018 proposed rule was published in the *Federal Register* on April 30, 2018, and initially offered a 30-day comment period through May 30, 2018. Before that period of time lapsed, the Agency decided to provide the public with more time to comment and an opportunity to provide testimony at a public hearing. That public hearing took place on July 17, 2018 in Washington, DC; and the comment period remained open until August 16, 2018. The initial 110-day comment period is now being supplemented by an additional 60 days for a total period of 170 days for the public to provide information on this proposed rule. This additional time is sufficient to afford the public with an opportunity to provide the Agency with comments and supplemental information to consider as we move forward to develop a final rule to better provide scientific transparency in Agency rulemakings.

Transparency in science that enables independent validation of scientific conclusions is important to advancing the Agency's mission. In no way does the proposed rule or the supplemental notice suppress research or censor scientists. On the contrary, it acknowledges that all science is welcome at the Agency and provides a clear awareness to researchers and the general public that, if finalized, the Agency will utilize procedures with the goal of making the science on which future significant regulatory decisions are based more transparent while still ensuring the protection of confidential business information (CBI) and personally identifiable information (PII). The supplemental notice asks for public comment on all of these important considerations. The Agency will consider all public comments we receive as we develop the final rule this year.

The Agency respectfully disagrees with any assessment that the proposed rule, if finalized, would impede the Agency's ability to respond to emergencies using data and scientific information. Our most important environmental statutes provide EPA with authority to issue emergency orders when necessary and to respond to and address environmental emergencies to protect human health and the environment, and this proposed rule would not limit or impede EPA's authority to undertake such responses. For example, the Agency has created a fast-track process for handling requests to be added to our List N: Disinfectants for Use Against SARS-CoV-2 (List N). Through this process, we are reviewing most submissions within 14 days, as compared to the 90-day window these reviews typically take.

Research and Development

EPA scientists continue to work with numerous federal, state and local stakeholders and provide input on several aspects of the federal response. Scientists in EPA's Office of Research and Development (ORD) are sharing EPA reports and other useful technical information on sample collection with the CDC's Water, Sanitation, and Hygiene (WASH) team. CDC consulted with ORD researchers about environmental surface samples and wastewater sample collection and analysis to respond to a potential expansion of the response to the current COVID-19 pandemic. Both teams discussed various aspects of surface and wastewater sample collection and the challenges associated with the interpretation of sample analysis results. This interagency collaboration and cooperation will continue.

Our ORD scientists and emergency response staff provided technical support on SARS-CoV-2 disinfection to the Transportation Security Administration (TSA) to inform TSA's decisions on cleaning methods using EPA-approved disinfectants. In addition, EPA scientists recommended decontamination options using EPA's list of registered products for COVID-19 and recommended that they be applied per the manufacturers' directions to have the best disinfection on a variety of surfaces on the Carnival Grand Princess cruise ship. Our scientists also advised that sodium hypochlorite-based solutions tested better than hydrogen peroxide-based disinfectants in ORD research against other biological agents on materials such as asphalt and concrete.

The Coronavirus Aid, Relief and Economic Security (CARES) Act provided \$1.5 million in supplemental funding to enable ORD to address specific COVID-19 environmental research needs. This funding will allow Agency researchers to develop: methods to reduce the risks from environmental transmission of COVID-19 via contaminated surfaces or materials; improved guidance for manufacturers seeking to add a COVID-19 claim to their registered pesticide product; more efficient environmental sampling and a clearer understanding of the level of detection needed to support environmental response decision-making for SARS-CoV-2; decontamination methods, using EPA's List N products, to disinfect challenging materials, including porous surfaces; methods suitable to decontaminate and disinfect large, or complex areas; and a method to measure SARS-CoV-2 in wastewater to better understand the virus' persistence in wastewater, evaluate the effectiveness of wastewater disinfection and determine if wastewater can serve as indicator of community infection.

Administrator Wheeler has also asked the Science Advisory Board (SAB) to provide rapid review and feedback on our SARS-CoV-2 research. EPA scientists have identified a number of research areas to focus on to further help combat and diminish the spread of COVID-19 including environmental cleanup and disinfection techniques, virus behavior in wastewater and the air, and procedures for disinfecting personal protective equipment. This input from SAB will enhance and support the Agency's existing capabilities to address the environmental and human health impacts from the virus that causes COVID-

19 both now and in the future.

Finally, the Agency has been working with CDC and other federal entities on guidance to the American public on practical easy to understand steps that can be taken to minimize risk as we look to opening up America.

Air and Radiation

EPA's Office of Air and Radiation (OAR) is working with a network of state, local, and tribal agencies and volunteers to continue air and radiation monitoring across the country as a mission essential function, while recognizing that the COVID-19 response has the potential to put a strain on some states' and locals' monitoring resources. OAR is encouraging air monitoring agencies to continue to operate the air monitoring networks to the best of their ability, while considering employee health and safety.

Chemical Safety and Pollution Prevention

As noted above, EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has been working tirelessly to quickly assess and identify qualified surface disinfectant products that can be used against COVID-19. As you might expect, EPA has seen an influx of requests from companies seeking to participate in the COVID-19 response. As such, the Agency has created a fast-track process for handling requests to be added to our List N: Disinfectants for Use Against SARS-CoV-2 (List N). Through this process we are reviewing most submissions within 14 days, as compared to the 90-day window these reviews typically take. We continue to add new surface disinfectants to List N, bringing the total number of products on the list to more than 410.

Land and Emergency Management

As we continue to adjust to the evolving COVID-19 situation, EPA is taking the necessary steps to ensure that decisions about ongoing activities at Superfund and other cleanup sites are made with the health and safety of communities, EPA staff, state, and tribal partners, and contractors as the priority. On April 10, EPA issued interim guidance to the Agency's regional offices that focuses on decision-making at emergency response and long-term cleanups sites where EPA is the lead agency or has direct oversight of, or responsibility for, the cleanup work. This includes, but is not limited to, Superfund cleanups, Resource Conservation and Recovery Act (RCRA) corrective actions, Toxic Substances Control Act (TSCA) PCB cleanups, Oil Pollution Act spill responses, and Underground Storage Tank Program actions. In addition, EPA is sharing this guidance with states to take into consideration as they encounter similar issues at state-lead RCRA cleanup sites.

Decisions about continuing on-site activities are made on a case-by-case basis and EPA will update this guidance as appropriate. EPA's regional offices are working closely with their local, state, and tribal partners to evaluate options for continuing site work or securing sites, especially in areas where local health declarations are in effect. However, it is important to note that EPA maintains its ability to respond to environmental emergencies in any situation where we are called upon to protect human health and the environment by responding to releases of chemical, oil, radiological, biological, and other hazardous materials.

Water

Ensuring that drinking water and wastewater services are fully operational is also critical to containing COVID-19 and protecting Americans from other public health risks. We want the American public to understand that it is safe to continue to drink water from their tap, as well as wash their hands, and be confident that both their drinking water and wastewater are being treated by one of America's 165,000 public water and wastewater treatment facilities. These facilities are operated by our nation's water and wastewater employees, who are everyday heroes on the frontline of protecting human health and the environment every single day. On March 27, the Agency sent a letter to Governors in all 50 states, territories, and Washington, DC, requesting that water and wastewater workers, as well as the manufacturers and suppliers who provide vital services and materials to the water sector, are considered essential workers and businesses by state authorities when enacting restrictions to curb the spread of COVID-19. Our critical infrastructure and the operators who ensure the safe supply of water to our homes and hospitals depend on treatment chemicals, laboratory supplies, and related goods and materials.

EPA's Office of Water is engaged in a significant number of activities and information requests to support the water sector during the COVID-19 pandemic. The Agency is focused on educating the public and supporting water system resiliency planning and implementation related to the potential impacts of COVID-19. For example, EPA provided information on drinking water and wastewater as they relate to COVID-19 that provides clarity to the public. EPA has also been actively meeting with a wide range of stakeholders in the water sector to acknowledge the importance of their work and identify ways that EPA and its partners can support the sector during the COVID-19 pandemic. EPA has been actively responding to the input we receive and is providing information on resources that water stakeholders—including states, tribes, municipalities, utilities, and their workforce—can use to support operations during the pandemic, including resources that can help maintain adequate staffing and laboratory capacity.

Additionally, EPA provided web resources that drinking water and wastewater utilities can use to help ensure continued operations during the pandemic, including addressing potential staff shortages and supply chain disruptions (www.epa.gov/coronavirus).

Outreach

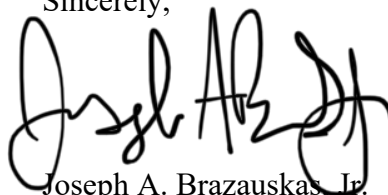
The COVID-19 pandemic has presented unique and shared challenges for state, local, and tribal governments, and environmental justice communities. EPA has been engaged with our stakeholders throughout the developing pandemic and compiled a website to share key EPA resources, frequently asked questions, and communications for EPA's government partners (<https://www.epa.gov/coronavirus/coronavirus-covid-19-resources-state-local-and-tribal-agencies-and-associations>).

Additionally, EPA has reached out to all tribes in an effort to demonstrate that the Agency remains "open for business" to support the tribes during this time. EPA held a virtual meeting with the National Tribal Caucus Executive Committee to discuss tribal impacts and activities. EPA staff also continue to discuss the continuing operation of our tribal programs, focused on our consultation and outreach with tribes on the COVID-19 challenges they are facing. EPA's Office of Environmental Justice also continues to operate our environmental justice hotline and respond to any concerns raised by communities.

EPA's Office of Public Affairs and Office of General Counsel continue to work through our Limited English Proficiency contract to translate COVID-19 materials on our epa.gov website into the nine most prominent languages spoken in the United States by persons who have limited proficiency in English (Spanish, Chinese, Vietnamese, Korean, Tagalog, Arabic, Russian, Haitian, and Portuguese).

As you can see, EPA staff across the nation have adjusted to the COVID-19 crisis as it has evolved, and we will continue to do so. It is important that we maintain our focus on the Agency's mission to protect human health and the environment, to best serve the American people. If you have further questions, you may contact me, or your staff may contact Kristien Knapp in EPA's Office of Congressional and Intergovernmental Relations at Knapp.Kristien@epa.gov or (202) 564-3277.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph A. Brazauskas, Jr.", written in a cursive style.

Joseph A. Brazauskas, Jr.
Associate Administrator